FEDERAL EMPLOYERS' LIABILITY ACT—SURVIVAL OF ACTION FOR INJURIES—CONTRIBUTORY NEGLIGENCE OF BENEFICIARY AS DEFENSE.—The plaintiff's sixteen year old son was injured while in the defendant's employ and died as a result of such injuries. The plaintiff had obtained this employment for his son by fraudulently misrepresenting his age as seventeen. This conduct by the father had been adjudged by the trial court as contributory negligence. *Held,* that the contributory negligence of the father was a defense to the action. *Crevelli v. Chicago, M. & St. P. Ry. Co.* (1917, Wash.) 167 Pac. 66.

The federal Employers' Liability Act of 1908 provided two distinct rights of action: one in the injured employee for his personal loss and suffering when his injuries were not immediately fatal, the other in his personal representative for the pecuniary loss sustained by certain designated relatives from his death, whether the death was instantaneous or resulted later. *Michigan Cent. R. R. Co. v. Vreeland* (1913) 227 U. S. 59, 33 Sup. Ct. 192. Prior to the Amendment of 1910 the first named right of action did not survive the employee's death. *American R. R. Co. v. Didricksen* (1912) 227 U. S. 145, 33 Sup. Ct. 224. But that Amendment provided for its survival for the benefit of the same relatives as were beneficiaries of the second cause of action above mentioned. *St. Louis Iron Mt. Ry. Co. v. Craft* (1915) 237 U. S. 648, 35 Sup. Ct. 704. In the principal case it was admitted that the father's contributory negligence was a defense to the second cause of action, *i. e.,* his right to recover for his own pecuniary loss due to his son's death; but the plaintiff contended that such negligence did not defeat recovery on the first cause of action, *i. e.,* the son's right to recover for his pain and suffering. Under state statutes where survival is for the benefit of the estate, it is generally held that the negligence of one who will ultimately be benefited is no bar to recovery. *Love v. Detroit etc. R. R. Co.* (1912) 170 Mich. 1; 135 N. W. 963; *Nashville Lumber Co. v. Busbee* (1911) 100 Ark. 76; 139 S. W. 301. The court attempts to distinguish such cases on the ground that recovery under the federal Act is for the benefit of named beneficiaries, and from this the court argues that the right of action which the Amendment causes to survive, is really a new right of action and that the beneficiary is therefore barred by his negligence. This construction of the Act seems opposed to the express terms of the Amendment and also to the language of the Supreme Court in *St. Louis & Iron Mt. Ry. v. Craft, supra.* Under a similar state statute, the Connecticut court has declared that negligence of the statutory distributee would not bar recovery by the administrator. *Wilmot v. McPadden* (1905) 78 Conn. 276, 284, 61 Atl. 1069, 1072; see also *Warren v. Manchester etc. Ry.* (1900) 70 N. H. 352, 47 Atl. 735. No precise authority construing the federal Act was cited by the court, and none has been found.

FOREIGN CORPORATIONS—SERVICE ON SECRETARY OF STATE UNDER STATUTE NOT REQUIRING NOTICE TO CORPORATION.—Section 405 of the California Civil Code provided for service of summons upon the Secretary of State in case a foreign corporation doing business in the state should fail to designate an agent for service. The Code did not provide for notification by the Secretary of State to the foreign corporation. *Held,* that the provision for such service was unconstitutional as not amounting to due process of law. *Knapp v. Bullock Tractor Co.* (1917, S. D. Cal.) 242 Fed. 543.

Authority on this subject is divided. See in support of the principal case, *King Tonopah Mining Co. v. Lynch* (1916, Nev.) 232 Fed. 485. The decision is opposed to that of the California Supreme Court on the same statute. *Olender v. Crystalline Mining Co.* (1906) 149 Cal. 482, 86 Pac. 1082. An apparently similar statute was upheld in North Carolina on the theory that a state, having the privilege of excluding foreign corporations altogether, may impose any con-

dition upon their admission, which does not conflict with federal policy. *Fisher v. Traders' etc. Ins. Co.* (1904) 136 N. C. 217, 48 S. E. 667. To this the California court added that consent to service on the Secretary of the State might be inferred from the failure to designate any other agent. On the other hand statutes which require foreign corporations to waive the privilege of removing cases to the federal courts have been held invalid by the United States Supreme Court on the ground that the state could not enforce an agreement attempting to deprive the corporation of rights and privileges guaranteed by the Constitution. *Home Insurance Co. v. Morse* (1874 U. S.) 20 Wall. 445; *Southern Pacific Co. v. Denton* (1892) 146 U. S. 202, 13 Sup. Ct. 44. In answer to this reasoning it may be pointed out that many constitutional privileges may be waived by the voluntary consent of the person intended to be benefited, and that the admitted power of excluding foreign corporations altogether would seem to include the power of requiring such waiver as a condition of admission. *Cf. Horn Silver Mining Co. v. New York* (1892) 143 U. S. 305, 315, 12 Sup. Ct. 403, 405. The true explanation of the decision in *Southern Pacific Co. v. Denton* would seem to be that suggested by Mr. Justice Holmes, that the agreement required in that case was contrary to the *policy* of the federal constitution as embodied in the provisions for the establishment of federal courts. See *Western Union Tel. Co. v. Kansas* (1910) 216 U. S. 1, 54, 30 Sup. Ct. 190, 208, *per* Holmes, J., dissenting. The real question in the principal case would be, then, whether there is a similar policy preventing a valid agreement to be bound by a personal judgment without notice. The difficulty seems less serious when it is pointed out that the corporation had only to designate an agent as the statute provided, to avoid the risk of which it complained. But the whole subject of what Mr. Justice Holmes called "unconstitutional conditions" will remain in some doubt until the Supreme Court clears it up. In the principal case any inference that the corporation consented to the statutory condition that service might be made upon the Secretary of State would have been purely fictitious, as there was no attempt whatever to comply with the statute regulating the admission of foreign corporations.

FRAUDULENT CONVEYANCES—CONSIDERATION—AGREEMENT TO SUPPORT GRANTOR.—A grantor conveyed property to the defendant in consideration of the latter's promise to support the grantor for life. The property retained by the grantor was of little value and less than the existing claim of the plaintiff but there was no evidence of actual intent to defraud creditors. *Held,* that the conveyance was fraudulent and void. *Ludlow Savings Bank v. Knight* (1917, Vt.) 102 Atl. 51.

The law of fraudulent conveyances does not avoid transfers made on good consideration and *bona fide*. But "good consideration" is construed to mean, as between the grantor's creditors and those claiming under the transfer, a valuable consideration. Bump, *Fraud. Conv.* (3d ed.) 221; *Seymour v. Wilson* (1859) 19 N. Y. 417. In the principal case the transaction was valid *inter partes* and, since they were innocent of actual fraud, courts of equity would have given the grantor a remedy had the grantee failed to provide the promised support. *Payette v. Ferrier* (1899) 20 Wash. 479, 55 Pac. 629. As to existing creditors, however, the weight of authority holds such a transfer fraudulent and void irrespective of the intent of the parties. *Egery v. Johnson* (1879) 70 Me. 258; *Rolfe v. Clarke* (1916) 224 Mass. 407, 113 N. E. 182; see Bigelow, *Fraud. Conv.* (Knowlton's ed.) 545. The opinion in the instant case states that "though the consideration is valuable, it is wanting in good faith as to creditors and the character of the transaction is such as to put the grantee upon inquiry." It is submitted, however, that a sounder explanation is to say that though the grantee is a purchaser in good faith, the consideration is not valuable as to existing creditors. As to them, the conveyance is considered gratuitous, because the